

ARTICLE III: NONCONFORMING PROVISIONS

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Chapter 19.080

Nonconformities**Division I: General Nonconforming Provisions – Lots, Structures and Uses.****19.080.010 Intent and Purpose**

- A. This Article provides for the orderly termination of nonconforming rights for lots, structures and uses that were established but, due to revisions to the provisions of the Zoning Code, no longer comply. The orderly termination of legally established nonconforming lots, structures and uses is necessary to promote the public health, safety and general welfare, and to bring such lots, structures and uses into conformity with the goals, objectives and policies of the Zoning Code and the General Plan. Where a lot, structure or use is referred to as nonconforming it shall mean that it is legally nonconforming.
- B. This Article limits the expansion of nonconforming lots, structures and uses and establishes the circumstances under which they may be continued, and provides for the correction, maintenance, and removal of such lots, structures and uses.
- C. The City finds that nonconforming lots, structures and uses within the City, both those that are legally established and those that are illegal, are detrimental to the orderly development of the City and are detrimental to the health, safety, peace, comfort and general welfare of persons and property within the City.
- D. Nonconforming lots, structures and uses shall be eliminated as rapidly as possible as set forth in this Article and without infringing upon the constitutional rights of the owners of legally established nonconforming properties.

19.080.020 Establishment of Nonconforming Status

- A. These provisions shall regulate the continuation, termination, and modification of lots, structures and uses which were lawfully established, but which no longer conform to the provisions of the Zoning Code due to a change in zoning boundaries, change in the regulations for the zone in which it is located or upon annexation. A change in ownership or tenancy without any change in use, occupancy, or development shall not affect any of the legal nonconforming rights, privileges and responsibilities provided under this Article.
- B. Lots, structures and uses not having previously acquired proper permits are illegal and subject to immediate abatement.
- C. It shall be the property owner's responsibility to provide evidence or information to justify the establishment of nonconforming rights.
- D. All decisions and determinations, including whether a lot, structure or use qualifies as nonconforming, whether a nonconforming structure or use can be restored after partial destruction, or whether a building permit can be issued for work on a nonconforming structure use shall be the Zoning Administrator's responsibility. The Zoning Administrator may approve, deny, conditionally approve or refer any determination request to the City Planning Commission.

Any approval, denial, or conditional approval of the Zoning Administrator may be appealed in accordance with Chapter 19.680 (Appeals).

- E. Any nonconforming situation that becomes specifically authorized under the terms of an approval pursuant to the Zoning Code shall henceforth be governed by the terms of such approval and shall no longer be considered to be a nonconformity, unless and until such approval expires or is revoked.

19.080.030 Continuation and Maintenance

A. Continuation

1. Except as otherwise provided herein, any lot, structure or use legally established on the effective date of the Zoning Code, may continue as a nonconforming lot, structure, or use, respectively any amendment thereto.
2. Any lot, structure, or use legally established prior to the annexation of the property may continue as a nonconforming lot structure, or use, respectfully.

B. Maintenance

Routine maintenance and repairs may be performed on a nonconforming lot, use, or structure, provided such work does not involve structural alterations or any enlargement of the structure subject to the granting of building permits as required by the Building Official.

19.080.040 Loss of Nonconforming Status

- A. When any nonconformity is eliminated or brought into conformance with the current regulations of the Zoning Code, the nonconforming rights and privileges with respect to that nonconformity are terminated and shall not be restored.
- B. Except as otherwise provided for nonconforming single-family residential uses and except for nonconforming uses involving the on-sale or off-sale of alcoholic beverages, whenever a nonconforming use has been discontinued for a continuous period of 90 days or more or whenever a nonconforming use is changed to another use, the nonconforming use shall not be reestablished, and the use of the structure or site thereafter shall be brought into conformity with the zone in which it is located. Discontinuation shall mean any termination of a use, regardless of intent to resume the use. Payment of a valid business tax certificate shall in and of itself not be considered to be a continuation of the use.
- C. A nonconforming single-family residential use which has been discontinued for a period of 180 days or more may be reestablished subject to the granting of a minor conditional use permit and affirmative determinations based on the following findings:
 1. The continuation of the nonconforming single-family residential use will not adversely affect or be detrimental to the health, safety and general welfare of the public or property or improvements within the area.
 2. The nonconforming single-family residential use is substantially compatible with existing and proposed uses in the general area, including factors relating to the nature of its location, operation, building design and site design.
 3. The continuation of the nonconforming single-family residential use will protect a valuable property investment.

19.080.045 Amortization

The Zoning Code gives the City Council the authority to establish Amortization Regulations for nonconforming uses or structures.

Division II: Nonconforming Lots**19.080.050 Continuation and Use of a Nonconforming Lot**

Any lawfully created lot which becomes nonconforming with regard to lot area, street frontage, lot width, lot depth or accessibility may continue indefinitely with such nonconformity and may be developed and used as if it were a conforming lot. However, any property proposed for development with multi-family dwellings shall be fully conforming as to lot area and lot width.

Division III: Nonconforming Structures and Uses**19.080.060 Modification or Expansion of Nonconforming Structures**

No nonconforming structure shall be altered, reconstructed or expanded the degree of nonconformity with respect to development standards for, including but not limited to, the setbacks, height of structures, distances between structures and the parking facilities as prescribed in the regulations for the zone in which the structure is located, unless a variance is granted pursuant to this Title.

19.080.070 Modifications or Expansions of Nonconforming Uses

- A. Expansion of a nonconforming non-residential use is prohibited, unless a minor conditional use permit is first obtained. In the granting of a minor conditional use permit, all of the following findings shall be made:
1. Such expansion will protect a valuable property investment;
 2. Such expansion and the proposed use will not adversely affect or be materially detrimental to the surrounding neighborhood; and
 3. There is a need for modernization in order to properly operate the use and protect valuable property rights.
 4. The expansion shall be architecturally compatible with the existing building;
 5. The expansion shall be compatible with the character of the surrounding area; and
 6. The expansion shall not displace on-site parking.
- B. Expansion of a nonconforming non-residential use may be expanded on the legally recognized parcel upon which it is established, subject to the granting of a minor conditional use permit. In the granting of a minor conditional use permit, the following findings shall be made:
1. The expansion shall not be for the purpose of increasing the number of living units on the property;

2. The expansion shall benefit the health, safety, and welfare of the occupants;
 3. The expansion shall be architecturally compatible with the existing building;
 4. The expansion shall be compatible with the character of the surrounding area; and
 5. The expansion shall not displace on-site parking.
- C. The provisions of paragraph A and B of this Chapter do not apply to property zoned RA-5 or RC and described in Sections 3or 4 of Measure R, enacted November 13, 1979

19.080.080 Restoration of a Destroyed Nonconforming Structure or Use

- A. Whenever a nonconforming non-residential structure which does not comply with the development standards of the underlying zone, including setbacks, height of structures, distances between structures, parking or the use of which does not conform with the regulations of the underlying zone, is destroyed by fire or other calamity, by act of God, or by the public enemy to the extent of 50 percent or less, the structure may be restored and the nonconforming use may be resumed, provided that all required permits are obtained and the restoration construction is started within 90 days and diligently pursued to completion.
- B. When the destruction exceeds 50 percent or the nonconforming structure is voluntarily demolished or is required by law to be demolished, the structure shall not be restored except in full conformity with the regulations of the zone in which it is located.
- C. A nonconforming single-family residential use which has been destroyed by more than 50 percent may be restored subject to the granting of a minor conditional use permit and affirmative determination of the following findings:
- a. The restoration of the nonconforming single family residential use will not adversely affect or be detrimental to the health, safety, and general welfare of the public or property or improvements within the area.
 - b. The restoration of the nonconforming single-family residential use is substantially compatible with existing and proposed uses in the general area, including factors relating to the nature of its location, operation, building design, and site design.
 - c. The restoration of the nonconforming single-family residential use will protect a valuable property investment.
- D. The extent of damage or partial destruction shall be based upon the ratio of the estimated cost of restoring the nonconforming structure to its condition prior to such damage or partial destruction to the estimated cost of duplicating the entire structure as it existed prior thereto. Estimates for this purpose shall be made by or shall be reviewed and approved by the Building Official and the Zoning Administrator and shall be based on the minimum cost of construction in compliance with the Building Code.

19.080.090 Revocation of Nonconforming Structure or Use

The City may revoke the right to continue a nonconforming use or structure pursuant to the procedures for permit modification and revocation contained in Chapter 19.700 (Variance or Permit Modification and Revocation).

19.080.100 Loss of Nonconforming Status for Alcoholic Beverage Sales

Any business which sells on-sale or off-sale alcoholic beverages, including beer and wine, may not be continued or reestablished without a conditional use permit or a minor conditional use permit in accordance with the Zoning Code if any of the following occur:

- A. The business establishment changes its type of retail liquor license within a license classification; or
- B. The operation of the business establishment is abandoned or discontinued for any period of time, excluding a maximum 30-day closure required to perform necessary repairs or restoration which does not increase the square footage of the business used for the sale of alcoholic beverages; or
- C. There is a substantial change in the mode or character in the operation of the business establishment.